

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC.,)	
)	
Plaintiff-Counterclaim Defendant,)	
)	
v.)	
)	
LEACHCO, INC.,)	
)	
Defendant-Counterclaim Plaintiff/ Third Party Plaintiff,)	No. 3:07-cv-01600-ARC
)	
and)	(Judge A. Richard Caputo)
)	
JAMIE S. LEACH,)	(electronically filed)
)	
Counterclaim Plaintiff/ Third Party Plaintiff,)	
)	
)	
v.)	
)	
JOHN M. KIEFER, JR.,)	
)	
Third Party Defendant.)	

SECOND AMENDED ANSWER AND COUNTERCLAIMS

The Defendant responds to the numbered paragraphs of the Amended Complaint, aside from those in dismissed Count 2, as follows:

1. Admitted.
2. Admitted except that the Defendant's correct corporate name is Leachco, Inc.
- 3-9. Admitted.
- 10-16. Denied.

Counterclaims

COUNT 1

The Defendant-Counterclaim Plaintiff-Third Party Plaintiff Leachco, Inc. ("Leachco") and the Counterclaim Plaintiff-Third Party Plaintiff Jamie S. Leach counterclaim against the Counterclaim Defendant Babyage.com, Inc. and Third Party Defendant John M. Kiefer, Jr. as follows:

1. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.
2. Jamie S. Leach is individual residing in Oklahoma.
3. Babyage.com, Inc. is a corporation having a residence in this District and having a regular and established place of business in this District, and has committed acts of infringement within this District.
4. John M. Kiefer, Jr. is an individual having a regular and established place of business in this District, and has committed acts of infringement within this District.
5. Jurisdiction is based on 28 U.S.C. § 1338(a).
6. United States Patent No. 6,760,934 was issued on July 13, 2004.
7. At all times material hereto, Jamie S. Leach has been the owner of U.S. Patent No. 6,760,934.
8. At all times material hereto, the Leachco has been the exclusive licensee of U.S. Patent No. 6,760,934 from Jamie S. Leach.

9. Babyage.com, Inc. has infringed U.S. Patent No. 6,760,934 by its manufacture, use, sale and offer for sale of pillow products.

10. Babyage.com, Inc. has actively induced infringement of U.S. Patent No. 6,760,934 by others, including its customers for pillow products.

11. Babyage.com, Inc. has engaged in contributory infringement of U.S. Patent No. 6,760,934 by sale of pillow products to its customers.

12. John M. Kiefer, Jr. has actively induced infringement of U.S. Patent No. 6,760,934 by others, including Babyage.com, Inc. and its customers.

13. Leachco and Jamie S. Leach have complied with the marking requirements of 35 U.S.C. § 287(a).

14. The actions described in paragraphs 9, 10, 11 and 12 have been willful.

15. Leachco and Jamie S. Leach have been damaged by the actions described in paragraphs 9, 10, 11, 12 and 14.

COUNT 2

Leachco counterclaims against Babyage.com, Inc. as follows:

16. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.

17. Babyage.com, Inc. is a corporation having a residence in this District.

18. Jurisdiction is based on 28 U.S.C. §§ 1337(a) and 1338(a).

19. Leachco is a manufacturer of baby-related goods as well as adult comfort and maternity pillows, and sells these products in interstate commerce through a network of retailers.

20. Babyage.com, Inc. has sold and continues to sell baby-related goods in interstate commerce by means of an Internet website that it operates and controls. This website is found at found at www.babyage.com.

21. On the website identified in paragraph 20, Babyage.com, Inc. has caused the display of, and continues to display, at least one web page describing products of Leachco. At least one instance of such a web page is found at: <http://www.babyage.com/brands/leachco.htm>.

22. The web page or pages identified in paragraph 21 purportedly describe Leachco products, show images of Leachco products, and include multiple usages of Leachco trademarks, including "Leachco." Links within the purported Leachco product descriptions on these web pages bring up other web pages on the babyage.com website. Rather than displaying Leachco products, however, these linked web pages instead offer to sell the products of competitors of Leachco, including products manufactured at the instance of Babyage.com, Inc.

23. The web pages described in paragraphs 21 and 22 constitute false designations of origin, false and misleading descriptions of fact, and false and misleading representations.

24. The web pages described in paragraphs 21 and 22 are likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection and association of Babyage.com, Inc. with Leachco, and as to the origin, sponsorship and approval of the goods and commercial activities of Babyage.com, Inc.

25. The web pages identified in paragraphs 21 and 22 are used in commercial advertising and promotion, and misrepresent the nature, characteristics and qualities of the goods of Leachco.

26. Leachco is likely to be damaged, and has been damaged, by the actions described in paragraphs 21-25.

COUNT 3

Leachco counterclaims against Babyage.com, Inc. as follows:

27. Leachco is a corporation organized under Oklahoma law and a resident of Oklahoma.

28. Jamie S. Leach is individual residing in Oklahoma.

29. Babyage.com, Inc. is a corporation having a residence in this District.

30. Jurisdiction is based on 28 U.S.C. § 1338(a).

31. Babyage.com has used in its advertising, in connection with its Today's Mom Cozy Comfort pillow, the words "patent pending," when no application for patent has been made. Such advertising has included several web pages with point-of-sale capability, at which the Today's Mom Cozy Comfort pillow can be purchased. These web pages include web pages on the websites of amazon.com and babyage.com. Babyage.com has caused these web pages to be connected to the Internet. As a result of this Internet connection, these web pages have been distributed, reproduced and displayed on the computer screens of a large number of remote users of the Internet, including but not limited to the computer screens of those individuals who have used these web pages to purchase the Today's Mom Cozy Comfort pillow.

32. The actions described in paragraph 31 have been committed with the purpose of deceiving the public.

Babyage.com, Inc. is entitled to no relief on the claim asserted in its Complaint, and judgment thereon should be entered in favor of Leachco.

On Counterclaim Count 1, as to each Counterclaim Defendant and Third Party Defendant, Leachco and Jamie S. Leach request awards of damages, increased damages, interest, attorney fees and costs, an injunction against infringement, active inducement of infringement and contributory infringement, and such other relief to which Leachco and Jamie S. Leach are entitled.

On Counterclaim Count 2, as to Babyage.com, Inc., Leachco requests awards of profits, damages, triple damages, interest, attorney fees and costs, an injunction against future violations, and such other relief to which Leachco is entitled.

On Counterclaim Count 3, as to Babyage.com, Inc., Leachco and Jamie S. Leach request imposition of a penalty and fine of not more than \$500 for every offense, with one-half awarded to Leachco and Jamie S. Leach, and the other half to the use of the United States.

s/ Gary Peterson
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A jury trial is demanded.